

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

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**REPLY COMMENTS OF  
VANTAGE POINT SOLUTIONS AND ITS AFFECTED CLIENTS**

Vantage Point Solutions (VPS)<sup>1</sup> hereby submits reply comments in the above Further Notice of Proposed Rulemaking (FNPRM) on behalf of the following VPS clients.<sup>2</sup> . The record in this proceeding shows significant support of a data-driven challenge process if Form 477 data is used to determine Universal Service Support because the 477 data has proven to be laden with inaccuracies. Without an improved process of universal service support distribution, end users will be harmed as these affected incumbents, with proven track records of providing robust

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<sup>1</sup> VPS is an engineering and consulting company headquartered in Mitchell, South Dakota, representing over 400 clients in the US, including many RLECs and ISPs that file Form 477 and receive legacy USF, ACAM and CAF II support.

<sup>2</sup> Armstrong Holdings, Inc., Bascom Mutual Telephone Company, Clarence Telephone Company, Craigville Telephone Company, Inc., Egyptian Telephone Cooperative Association, Farmers Telephone Company of Batavia, IA, IAMO Telephone Company, Interstate Telecommunications Cooperative, Inc., Minburn Communications, New Hope Telephone Cooperative, Pembroke Telephone Cooperative, South Slope Cooperative Communications, Venture Communications Cooperative, and Webster-Calhoun Cooperative Telephone Association. Collectively, "Joint Commenters".

broadband and voice services, lose support needed to maintain existing infrastructure and additional build-outs to new locations.

### **Introduction and Background**

VPS' initial comments highlighted many inaccuracies identified by VPS and our clients joining these comments. The reason for doing so was to illustrate that blind reliance on 477 data would lead to support decisions based on inaccurate data in many cases and that the impacts to affected carriers and their end users would be substantial, potentially harming their ability to provide stable, on-going service. Per the Report and Order and FNPRM, 477 data would impact both A-CAM II model offers and potentially result in reverse auctions of entirely or almost entirely overlapped study areas. Therefore, the ramifications to affected carriers should not be understated. Other commenters recommending evaluation of 477 data and a challenge process include NTCA<sup>3</sup>, WTA<sup>4</sup> (if the Commission does not abandon its use of 477 data for this purpose), ITTA<sup>5</sup>, USTelecom<sup>6</sup>, Concerned Rural LECs<sup>7</sup>, FWA<sup>8</sup>, and TCA.<sup>9</sup>

VPS herein provides its reply that: (1) FCC Form 477 information should not be solely relied on to determine whether a study area is “entirely or almost entirely overlapped” because 477 data is not reliable enough to use for such purpose and steps must first be taken to improve

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<sup>3</sup> Comments of NTCA – The Rural Broadband Association, WC Docket Nos. 10-90, 14-58, 07-135, CC Docket No. 01-92 (Filed March 8, 2019)(“NTCA Comments”).

<sup>4</sup> Comments of WTA – Advocates For Rural Broadband, WC Docket Nos. 10-90, *et al.* (Filed March 8, 2019)(“WTA Comments”).

<sup>5</sup> Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket Nos. 10-90, *et al.* (Filed March 8, 2019)(“ITTA Comments”).

<sup>6</sup> Comments of The USTelecom Association, WC Docket Nos. 10-90, *et al.* (Filed March 8, 2019)(“USTelecom Comments”).

<sup>7</sup> Comments of The Concerned Rural LECs, WC Docket Nos. 10-90, *et al.* (Filed March 8, 2019)(“Concerned Rural LECs Comments”).

<sup>8</sup> Comments of FWA, WC Docket Nos. 10-90, *et al.* (Filed March 8, 2019)(“FWA Comments”).

<sup>9</sup> Comments of TCA, WC Docket Nos. 10-90, *et al.* (Filed March 8, 2019)(“TCA Comments”).

the accuracy of 477 data; (2) if the Commission plans to use 477 data to determine competitive overlap and reductions to ACAM II model offers and legacy support, a challenge process is a necessity; and (3) stability is essential to the continued advancement of rural broadband development and this stability should be bolstered by extended time between auctions and a wind-down period to allow for recovery of prior investments by legacy providers.

**1. Form 477 Data Continues to be Unreliable and Inaccurate for Purposes of Determining Financial Support and Measures Need to be Taken to Improve Data Accuracy.**

**a. At the very least, 477 data is limited in scope and does not provide the complete picture of coverage details needed to make a funding determination.**

VPS joins NTCA's sentiment that, while Form 477 data provides an overview of coverage, it does not provide the depth of information necessary to act as the sole measurement tool for the potential stripping of crucial program funding.<sup>10</sup> As noted in our prior Comments, Form 477's use of "Advertised Speed" quickly leads to overreporting, particularly when the advertised speed consists of an average speed, leaving many rural customers located further from the tower at speeds far below those reported. For the sake of consistency and accuracy, the FCC's new speed testing rules<sup>11</sup> should be implemented as the standard for all carriers in place of advertised speeds. Additionally, Form 477 voice data is not publicly available. This information is crucial to the determination of whether a study area is overlapped, such as whether the alleged competitor offers qualified voice service. This lack of transparency allows for debilitating gaps in the knowledge of incumbent carriers who are impacted by the 477 data, limiting their ability to

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<sup>10</sup> NTCA Comments at 3.

<sup>11</sup> *Speed and Latency Performance Testing Order*, DA 18-710 (2018).

analyze the accuracy of the data and prepare for potential impacts of competitive overlap determinations.

**b. At most, 477 Data is at times wildly inaccurate, creating a real potential for improper loss of funding for carriers and service areas in great need.**

VPS shared in its initial comments numerous examples of substantial Form 477 filing inaccuracies that had the ability to impact hundreds of thousands of dollars in support. Breeze Broadband Communications, Inc, became one of these instances when it filed December 2017 Form 477 data claiming service in Iowa prior to ceasing broadband operations in 2018. This filing could impact 26 study areas, including partial or complete overlap with 15 ILEC A-CAM II eligible study areas. Barrier Communications Corporation (“BarrierFree”) also created extreme cause for concern when it filed 477 data showing it served every census block in numerous states when its real service was offered in just a limited area of one state. BarrierFree later openly admitted errors in its Form 477 filings and advised that the filing did not reflect BarrierFree’s current level of broadband deployment.<sup>12</sup> This instance alone reached seven states, thus potentially subjecting RoR carriers to future unwarranted loss of support. Despite the later discovery that BarrierFree’s filing would not impact support due to its lack of providing voice service in any state, the filing highlights and validates concerns held by many in relation to trusting Form 477 data – first, that the data can easily be incorrectly reported, and second, that the lack of transparency regarding services a carrier provides only complicates the overlap determination process.

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<sup>12</sup> See TCA Comments at 4, further referencing Letter from Free Press. *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket 18-238. (filed March 5, 2019). This letter notes that Form 477 data filed by Barrier Communications Corporation directly contradicts Barrier’s public service offerings on its website.

These instances support the collective concerns of Rural LECs that, while RLECs must be careful in their Form 477 submissions due to USF Funding reliance upon 477 data accuracy, unsubsidized competitors remain unincentivized to take the time and effort necessary to verify they are making accurate filings.<sup>13</sup> Given the FCC's suggestion to use 477 data as more than just a collection of data for information, due diligence requires action to be taken to improve the accuracy of these filings before they can be used to make crucial determinations that impact carriers and the future of broadband availability for end users. The Commission itself and other governmental entities<sup>14</sup> have noted concern with Form 477 inaccuracies. With a statutory duty to protect end users, it would be imprudent for the Commission to take an easy route of using current 477 data without a data-driven challenge process to make such major funding decisions instead of first instituting proper changes to improve 477 filing accuracy.

Some of those changes should include a better verification or audit process similar to the certification measures recently established for CAF recipients<sup>15</sup>, which would create greater accountability for all those filing 477 reports. The NTCA's proposition to post 477 reports under protective order to allow third parties to review and verify the information stated would also encourage proper filings. A final means of ensuring compliance for all carriers, including those unsubsidized and thus with less motivation for attention to detail in these filings, would be the

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<sup>13</sup> NTCA Comments at 5; TCA Comments at 4; FWA Comments at 5; Concerned Rural LECs at 4.

<sup>14</sup> **NTIA Requests Feedback on Improving Broadband Availability Data** (May 30, 2018), <https://www.ntia.doc.gov>. "The Form 477 data program is valuable, but the data is not independently validated or verified. It is also reported at the Census block level, so that can lead to inaccuracies that overstate availability – especially in rural areas where Census blocks are large." **Also, United States Government Accountability Office, Report to Congressional Requesters, Broadband Internet FCC's Data Overstate Access on Tribal Lands**, GAO-18-630 (September 2018), "Specifically, FCC's method of collecting mobile and fixed broadband data from providers (the Form 477) does not accurately or completely capture broadband access on tribal lands because it (1) captures nationwide broadband *availability* data – areas where providers may have broadband infrastructure – but does so in a way that leads to overstatements of availability..."

<sup>15</sup> *See, Speed and Latency Performance Testing Order*, DA 18-710, Para. 67 (2018).

implementation of fines that are more representative of the importance of truthful and accurate 477 submissions.

**2. A Challenge Process is Necessary to Determine Competitive Overlap Because Form 477 Data Alone is Unreliable for this Purpose and Ramifications are Significant to Carriers and Impacted End Users.**

**a. Competitive overlap impacts to incumbent providers and end users are significant and outweigh any administrative burden of a challenge process.**

Though the auction mechanism based upon 477 data has received some limited support, including select recommendations to expand the bidding process to areas with overlap as low as 50%<sup>16</sup> or even as a standard method of distribution for any area requesting support<sup>17</sup>, these supportive recommendations overlook the enormous impact such processes have on both current providers and rural consumers. For current carriers, removal of support involves millions of dollars and will likely prevent some carriers from continuing the services they currently provide. Some LECs may even go out of business, impacting all their other current customers and creating an even bigger broadband void. Even without the actual removal of financial support, the mere ongoing threat of an overlap auction taking place creates an atmosphere of instability, thus disincentivizing long-term investment in network systems and services since carriers that previously obtained RUS loans and/or invested in long-term network now run the risk of losing their support at any time. That will chill network investment counter to FCC's policy of supporting rural investment in broadband. By suggesting competitive auctions become a more standardized

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<sup>16</sup> Comments of The Wireless Internet Service Providers Association, WC Docket Nos. 10-90, *et al.*, at 3 (Filed March 8, 2019)("WISPA Comments").

<sup>17</sup> Comments of NCTA – The Internet & Television Association, WC Docket Nos. 10-90, *et al.*, at 1 (Filed March 8, 2019)("NCTA Comments").

method of distribution, NCTA and WISPA fail to take into account the severity of the instability that would arise as a result.

In addition to the loss of investment motivation for incumbent carriers, concerns should also be raised as to how quickly a new provider could adequately service an entire study area after winning an auction. Current service definitions allow for overlap to occur when even a single location is served within an entire census block. Allowing an auction and a subsequent winning provider to enter a study area, when the provider currently serves one or very few locations in that area, creates a real threat of service loss to end users already being served by an incumbent provider. The incumbent provider's network components may surpass usable life with no incentive for investment replacement, or the current provider may be forced to close. These unfortunate but realistic possibilities would result in a loss of service to the end user – the exact opposite effect intended by the Commission.

VPS suggests the introduction of a new standard requiring the providing of service to at least two-thirds of a census block in order to report the census block as being served. The NTCA also proposes an “actually served” standard, aptly pointing out that a “lack of actual subscribers across the entire census block is a strong indication that the purported unsubsidized competitor lacks the ability to actually provide high-quality service...”<sup>18</sup> WTA echoes this sentiment by emphasizing the importance of heavily weighing a current provider's commitment to actually provide service in the given area.<sup>19</sup> ITTA and Concerned Rural LECs both address the concern by

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<sup>18</sup> NTCA Comments at 10.

<sup>19</sup> WTA Comments at 11.

requesting all winning bidders be required to serve all locations in the auctioned area.<sup>20</sup> TCA advocates for an additional precaution to ensure end users are protected during the transition by including a provision allowing an RLEC to obtain support for serving an area if and/or where an auction winner defaults.<sup>21</sup>

**b. The overlap impacts on legacy providers and end users outweigh any administrative burden of a challenge process.**

Given these large impacts to incumbent carriers and end users alike, and the inaccuracies and limitations in 477 data noted above, it is evident that Form 477 data was not intended for the proposed use today or the financial implications such use would impose. In fact, the last overlap challenge resulted in 12 of 13 carriers providing clear evidence that they were not in fact 100% overlapped, contrary to what the 477 data had shown.<sup>22</sup> Without a challenge process, these carriers would have been denied the opportunity to retain their support and continue to provide needed services to their end users. The risk of inaccurate loss of funding to areas of need greatly outweighs any administrative burden of a challenge process.

**3. Stability is Essential to the Industry's Future and Growth, Thus Requiring a Limitation on Destabilizing Events, as Accomplished Through a Low Frequency of Auctions and the Institution of a Wind-down Period during Transition of Funding Loss.**

**a. Carriers require stability to continue investing in and advancing their networks for long-term use and expansion of service areas.**

Most of the rural broadband providers who filed comments in this proceeding identified a key element in the success of rural broadband development: the stability of support for the

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<sup>20</sup> ITTA Comments at 2; Concerned Rural LECs Comments at 9.

<sup>21</sup> TCA Comments at 7.

<sup>22</sup> Wireline Competition Bureau Concludes the 100 Percent Overlap Challenge Process ("100 Percent Overlap Challenge Order"), DA 17-1079 (November 2, 2017).



carriers providing long-term service.<sup>23</sup> Without such support there is no business case to provide enhanced or new broadband services in sparsely populated high cost rural areas. Also, when the FCC makes new proposals that threaten the stability of current support, it makes it more likely that rural providers currently taking significant risks to serve these areas will back away. Many of the Joint Commenters in this filing have been proactive in serving their customers and have already built out robust broadband networks.

In order to do so, many of the Joint Commenters took out long term loans from government programs (many from RUS) that were intended to assist carriers investing in much-needed rural infrastructure. The loan application requirements included financial forecasts based on rules in place at the time of the application and the loan approval process required certain levels of revenues in order to prove revenue levels were sufficient to sustain loan payments. Many of the Joint Commenters are still making loan payments for these long-term investments. Others have been in the planning phase but have delayed investments due to uncertainties created by ongoing USF reform. The potential for removal of support funds after investments are already sunk in long-term networks, and no procedures to challenge such removal, even if it is based on inaccurate 477 information, penalizes carriers who proactively made broadband investments. In addition, it steals all incentive from incumbent carriers to improve their service. This disincentive would only increase with shorter timeframes between overlap auctions. Investment will be chilled and end users will see less broadband advancement, not more.

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<sup>23</sup> TCA Comments at 7; Concerned Rural LECs Comments at 15; ITTA Comments at 14; USTelecom Comments at 3.

Despite WISPA's contention that auctions be held bi-yearly,<sup>24</sup> and NCTA's suggestion to make an auction standard practice for obtaining support in any area where it's needed,<sup>25</sup> longer terms between auctions are necessary in order to allow for greater stability and increased commitment and incentive for current providers to continue improving broadband connections. WISPA and NCTA hone too far in on a purely business economics viewpoint, which narrowly mindedness loses focus of the greater picture and FCC's mission to create an atmosphere for successful expansion of rural broadband. Routinely hosting auctions and awarding the lowest bidder may initially reduce federal dollars spent up front, but the long-term impacts would likely be an unfortunate promotion of cheaper, short-term solutions in place of the long-term investments promoted by the FCC's loan program options. For this reason, VPS joins ITTA and Concerned Rural LECs in recommending a significant time interval between overlap auctions.<sup>26</sup>

In the event of a competitor successfully outbidding an incumbent at an overlap auction, the majority of filed Comments strongly advise that a legacy carrier should be afforded a wind-down period within which to recover some, if not all, of their investment in their current network. While NTCA argues for a 10-year timeframe<sup>27</sup> and ITTA encourages transitional support to a legacy carrier to ensure that end users do not lose service while awaiting deployment by an auction winner,<sup>28</sup> WTA and USTelecom focus more on the ideology that the Commission's focus must not be derailed by a crusade to save money, but rather the FCC must remain steadfast in

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<sup>24</sup> WISPA Comments at 2.

<sup>25</sup> NCTA Comments at 1.

<sup>26</sup> ITTA Comments at 14; Concerned Rural LECs Comments at 17.

<sup>27</sup> NTCA Comments at 12.

<sup>28</sup> ITTA Comments at 12.

its mission to keep remaining customers served until a successful bidder is able to provide full coverage for current end users.<sup>29</sup>

The organizations and consulting groups concerned with overall system stability and sufficient wind-down procedures have consumers at the heart of the equation, in line with the FCC's ultimate focal point and statutory duty of universal service. The NCTA's proposition to make auctions and competitive bidding a standard for obtaining all support<sup>30</sup> fails to take into account any notion of long-term stability in the field, major RLEC long term investments or end user service considerations. Additionally, WISPA's statement that targeting of smaller areas is preferential for competitive bidders to assist them in avoiding larger areas that may require more infrastructure, cost, and time to build out<sup>31</sup> goes directly to the heart of the issue wherein the end users' best interests become lost in the name of financial efficiency or competitor cherry picking of small areas and not broader coverage provided by RLECs today. Legacy providers have invested substantial amounts of time and money to provide a network for the future, only to have inaccurate and insufficient 477 data create an opportunity for potential overlap auctions that may result in a loss to these carriers of their investment. While intended to inspire competitive market pricing and efficient use of support monies, some of the proposed terms only disincentivize any long-term investment and will likely lead to a broader deterioration of service in such areas. Consumers deserve more protection than would be afforded by such a system.

**b. Though a challenge process in itself cannot reconcile the 477 Data inaccuracies and lack of transparency, such a process in conjunction with Form 477 improvements**

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<sup>29</sup> WTA Comments at 15; USTelecom Comments at 3.

<sup>30</sup> NCTA Comments at 1.

<sup>31</sup> WISPA Comments at 5.

**will provide a more stable environment for the expansion of rural broadband networks.**

With the FCC's own concern about sole reliance on 477 data<sup>32</sup>, it is evident that improvements need to be made prior to allowing Form 477 to govern overlap determinations on its own. While a challenge process on its own only offers a second-chance opportunity to refute a potentially inaccurate 477 determination made against a current provider, a combination of Form 477 audits and penalties, a challenge procedure, and more realistic overlap assessments and procedures can promote greater financial efficiency without losing sight of the stability and long-term success of broadband development for consumers.

### **SUMMARY**

For the foregoing reasons, VPS and the Joint Commenters urge the Commission to make the suggested changes outlined herein. First, if the Commission intends to use Form 477 data for support determinations, measures to ensure the accuracy of that data need to be taken before it is relied on for this purpose. These measures should include the introduction of a new standard requiring the providing of service to at least two-thirds of a census block in order to report the census block as being served, a better verification or audit process similar to the certification measures recently established for CAF recipients, and implementation of fines that are better representative of the importance of truthful and accurate 477 submissions. Second, a challenge process is necessary, along with transparency of all information used to determine competitive overlap. Finally, measures such as a greater time interval between overlap auctions and

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<sup>32</sup> *Statement of Commissioner Michael O'Rielly accompanying FCC Order in WC Docket No. 18-90, FCC 18-187 (2018).*

sufficient wind-down procedures in the event an incumbent loses support in an auction, will ensure stability for the industry, and ultimately for end users. VPS respectfully requests your consideration of these recommendations.

Respectfully submitted,

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